



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R10-OAR-2014-0745; FRL-9921-29-Region 10]**

## **Approval and Promulgation of Implementation Plans; Washington: Infrastructure Requirements for the 2008 Ozone and 2010 Nitrogen Dioxide National Ambient Air**

### **Quality Standards**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is partially approving and partially disapproving the State Implementation Plan (SIP) submittal from Washington, received September 22, 2014, demonstrating that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, and nitrogen dioxide (NO<sub>2</sub>) on January 22, 2010. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIP to ensure that it meets the infrastructure requirements necessary to implement the new or revised NAAQS. Washington certified that the Washington SIP meets the infrastructure requirements of the CAA for the 2008 ozone and 2010 NO<sub>2</sub> NAAQS, except for those requirements related to the Prevention of Significant Deterioration (PSD) permitting program currently operated under a Federal Implementation Plan (FIP), certain elements of the regional haze program currently operated under a FIP, and specific requirements related to interstate transport which will be addressed in a separate action. The EPA has determined that the Washington SIP is adequate for purposes of the infrastructure SIP requirements of the CAA with the exceptions noted above.

The EPA has determined that the SIP deficiencies related to PSD permitting and regional haze, however, have been adequately addressed by the existing EPA FIPs and, therefore, no further action is required by Washington or the EPA for those elements. The EPA will address the remaining interstate transport requirements in a separate action.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2014-0745. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Programs Unit, Office of Air Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA, 98101. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information please contact Jeff Hunt at (206) 553-0256, [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov), or by using the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:**

**Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials “Act” or “CAA” mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words “EPA”, “we”, “us” or “our” mean or refer to the United States Environmental Protection Agency.

(iii) The initials “SIP” mean or refer to State Implementation Plan.

(iv) The words “Washington” and “State” mean the State of Washington.

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### **I. Background Information**

On July 18, 1997, the EPA promulgated a new NAAQS for ozone. The EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). Subsequently, on March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 ppm (73 FR 16436).

The EPA first set standards for NO<sub>2</sub> in 1971, setting both a primary standard (to protect health) and a secondary standard (to protect the public welfare) at 53 parts per billion (53 ppb), averaged annually. The EPA reviewed the standards in 1985 and 1996, deciding to retain the standards at the conclusion of each review. In 2005, the EPA began another review, resulting in the January 22, 2010, rulemaking to establish an additional primary NO<sub>2</sub> standard at 100 ppb, averaged over one hour (75 FR 6474).

States must submit SIPs meeting the requirements of CAA sections 110(a)(1) and (2)

within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to implement, maintain, and enforce the standards, so-called “infrastructure” requirements. To help states meet this statutory requirement, the EPA issued guidance to address infrastructure SIP elements generally for all NAAQS, including the 2008 ozone and 2010 NO<sub>2</sub> NAAQS.<sup>1</sup> As noted in the guidance document, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact via a letter to the EPA. On September 22, 2014, Washington made a submittal to the EPA certifying that the current Washington SIP meets the CAA section 110(a)(1) and (2) infrastructure requirements for the 2008 ozone and 2010 NO<sub>2</sub> NAAQS, except for certain requirements related to PSD permitting, regional haze, and interstate transport. The EPA proposed action on the submittal on October 17, 2014 (79 FR 62379). The comment period closed on November 17, 2014.

## **II. Response to Comments**

The EPA received one comment on its proposal.

*Comment:* “I think the EPA should back of[f] at trying to cripple working people by closing down COAL and COAL Fired Boilers. Try stopping other countries from pollution in the world.”

*Response:* The EPA evaluated the existing Washington SIP to determine if it meets the CAA section 110(a)(1) and (2) infrastructure requirements for the 2008 ozone and 2010 NO<sub>2</sub> NAAQS. Neither the EPA nor Washington proposed new regulations related to coal or coal

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<sup>1</sup> Stephen D. Page, Director, Office of Air Quality Planning and Standards. “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).” Memorandum to EPA Air Division Directors, Regions 1 – 10, September 13, 2013.

fired boilers in this action. Therefore, this comment is not relevant to this action and we are finalizing this partial approval and partial disapproval of the September 22, 2014, Washington SIP submittal as originally proposed.

### **III. Final Action**

The EPA is partially approving and partially disapproving the September 22, 2014, submittal from Washington demonstrating that the SIP meets the requirements of sections 110(a)(1) and (2) of the CAA for the 2008 ozone and 2010 NO<sub>2</sub> NAAQS. Specifically, we have determined that the current EPA-approved Washington SIP meets the following CAA section 110(a)(2) infrastructure elements: (A), (B), (C) - except for those elements covered by the PSD FIP, (D)(i)(II) – except for those elements covered by the PSD and regional haze FIPs, (D)(ii) – except for those elements covered by the PSD FIP, (E), (F), (G), (H), (J) - except for those elements covered by the PSD FIP, (K), (L), and (M). As discussed in the proposal for this action, the EPA anticipates no adverse consequences to Washington or to sources in the State resulting from the partial disapproval of the infrastructure SIP with respect to the PSD and regional haze FIPs. The EPA, likewise, anticipates no additional FIP responsibilities for PSD and regional haze as a result of the partial disapproval. Interstate transport requirements with respect to CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone and 2010 NO<sub>2</sub> NAAQS will be addressed in a separate action.

### **IV. Statutory and Executive Orders Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely

approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and

- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the *Puyallup Tribe of Indians Settlement Act of 1989*, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated September 3, 2013. The EPA did not receive a request for consultation.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by

5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 18, 2014.

Dennis J. McLerran,  
Regional Administrator,  
Region 10.



40 CFR part 52 is amended as follows:

## **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart WW - Washington**

2. Section 52.2470 is amended in paragraph (e) by adding an entry entitled “110(a)(2)

Infrastructure Requirements – 2008 Ozone and 2010 Nitrogen Dioxide Standards” in Table 2 –

Attainment, Maintenance, and Other Plans, at the end of the section with the heading “110(a)(2)

Infrastructure and Interstate Transport” to read as follows:

#### **§ 52.2470 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**TABLE 2 – ATTAINMENT, MAINTENANCE, AND OTHER PLANS**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * * *				
<b>110(a)(2) Infrastructure and Interstate Transport</b>				
* * * * *				
110(a)(2) Infrastructure Requirements – 2008 Ozone and 2010 Nitrogen Dioxide Standards	Statewide	9/22/14	[Insert <u>Federal Register</u> publication date] [Insert <u>Federal Register</u> citation]	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J),

				(K), (L), and (M).			
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[FR Doc. 2015-00013 Filed 01/13/2015 at 8:45 am; Publication Date: 01/14/2015]